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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,463	07/07/2003	Minken Patrick Yeh	10168.4	7593
7590	03/08/2005		EXAMINER	
Kirton & McConkie 1800 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			LEVKOVICH, NATALIA A	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,463	YEH, MINKEN PATRICK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Natalia Levkovich	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application:
  - 4a) Of the above claim(s) 7-8 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 9-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-20 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07/07/2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6 and 9-20, drawn to an air mixing chamber, classified in class 422, subclasses 84.
  - II. Claims 7-8, drawn to a method of mixing a stream of exhaled air, classified in class 436, subclass 181.
2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be employed for mixing various gas compositions.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Michael Kreiger on 02/03/05 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-6 and 9-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7-8 were withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-6 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weigold et al. (USP 5, 397,552) in view of Natsis et al. (USP 3,617,382).

Weigold teaches an apparatus for oxidizing gaseous organic compounds comprising a reaction chamber[‘enclosure’-examiner] having an inlet, an outlet, sensors and “a plurality of gas flow restricting baffles positioned within and along the elongated reaction chamber, the gas flow restricting baffles being alternatingly shaped along the chamber to direct gas flow...” The baffles may include holes. (Fig.15-16, Col.4, line 25; Claim 3).

Weigold does not disclose baffles being tapered and angled toward the inlet. Natsis et al. teach a mixing apparatus which includes “parallel baffles, extending horizontally, vertically or at

angle..."(Abstract). FIG. 24 shows "an outer section "[‘enclosure’ -examiner] which has "a plurality of conical [‘tapered’] baffles... joined to the inside surface" of the enclosure. The "inlet supplies the fluid to be treated or mixed in the apparatus and conduit ... provides the outlet means"(Col. 10, lines 10-20).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed tapered baffles angled in respect to the inlet or outlet in the modified apparatus of Weigold, in order to provide better mixing of fluids through redirecting / reversing and bifurcating the streams.

With regards to claim 4, 12 and 19, the shape of the baffles can be considered ‘substantially triangle’ or ‘substantially rectangle’, depending on extent to which the baffles are tapered. In respect to claims 5, 13 and 18, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed baffles continuously connected to the enclosure with as many sides as possible, depending on their specific shape, in order to provide sufficient rigidity to the apparatus.

### *Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700